FOR MYSORE STATE

Home (1954) Department

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G.O. No. 2908

Dated 29.9.54

Passed

Xad V

[Despatch Abstract.]

Crl Jus Appeal against acquittal-

S Kanara Sessions C.A No. 100/54/S.J.,

S Kanara Applt Declined

Ref.C. No. 4791/54-C5.

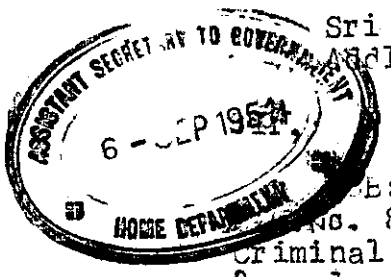
Office of the Addl.Dt.Magistrate
S.Kanara dated 31.8.54.

From

Sri V.Seetharama Servai,B.A.
Addl.Dt.Magistrate(I) South Kanara.

To

The Secretary to Government
Home Department,
Fort St. George,Madras 9



Sub: CRIMINAL JUSTICE--C.R. No.80/53 of Moolky Station--
S.C. No. 8/54 of Assistant Sessions Judge South Kanara and
Criminal appeal No.58/54 of ~~the~~ Sessions Judge South Kanara-
Appeal against acquittal- Report submitted.

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I enclose a copy of the report of the District Superintendent of Police South Kanara Ref.R.C. No.C1/14179/54 dated 19.8.54 and copies of the Judgments in duplicate in S.C. /54 on the file of the Principal Assistant Sessions Judge South Kanara and in criminal Appeal No.58/54 on the file of the Sessions Judge South Kanara along with the opinion of the Public Prosecutor South Kanara. I agree with the District Superintendent of Police South Kanara and the Public Prosecutor South Kanara.

2. I request that the Public Prosecutor Madras may be consulted and an appeal filed against the order of the Sessions Judge South Kanara in C.A. 58/54 of his court.

Yours faithfully,

2.9.54.
For Addl.Dt.Magistrate(I)

IC/2.9.54.

3/9

Copy of letter P.C.No.C1/14179/54 dated 19.8.54 from the Dt.Superintendent of Police S.Kanara Mangalore to the Addl.Dt. Magistrate (I) South Kanara,Mangalore.

Sub: Criminal Justice--Cr. No.80/53 under section 409 and 471 I.P.C of Mulky Police station- S.C. No.8/54 on the file of the Assistant Sessions Judge South Kanara and criminal appeal No. 58/54 on the file of the Sessions Judge South Kanara- Appeal against acquittal- Report forwarded.

The accused C.Jalaludain Yusuf, a branch Post Master of Permude concerned in Cr.No.80/53 under section 409 and 471 IPC of Mulky Police station was convicted by the learned Principal Assistant Sessions Judge, South Kanara S.C.No.8/54 on the file of his court. Against this order of conviction, the accused preferred an appeal before the Sessions Judge, South Kanara and the learned Sessions Judge in the Criminal Appeal No.58/54 on the file of his court has set aside the conviction and sentence passed against the accused and acquitted him on 30.7.54.

2. The Public Prosecutor, South Kanara who was consulted in the matter has opined that there are sufficient grounds to take up the matter to the High court against the decision of the Sessions Judge. The grounds of appeal prepared by him is enclosed herewith (in duplicate) the copy of Judgment in the trial court (S.C. 8/54) and copy of Judgment in Criminal appeal No.58/54 on the file of the Sessions Judge, South Kanara together with the case diary file in Mulky Police station Cr.No.80/53 under section 409 and 471 I.P.C are enclosed herewith.

3. I request you kindly to take necessary action to move the State Government to prefer an appeal before the High court of Judicature at Madras against the acquittal order passed by the Sessions Judge, South Kanara in his C.A.No.58/54.

True copy-

3.9.54.
For Addl.Dt.Magistrate(I)

IC/2.9.54 -A

3/9

GROUNDS

1. The appreciation of oral evidence is erroneous. It is a negative approach.

2 The learned judge failed to appreciate the significance of Ex.P1 and the testimony of P.W.1 and 2. The learned judge ought to have accepted their evidence and confirmed the conviction.

3. The learned judge ought to have have relied on the recital in P.11. made by the accused.

4. The learned Judge ought to have held that the suggestion of the appellant that he disbursed M.O. Simultaneously to several persons and that he might have obtained the T.1 on a different form, is only an afterthought by reason of the evidence of the F.P. expert ~~extent~~ in the committal court and ought to have accepted the statements made by the appellant in P 11. The learned judge was wrong in holding that the prosecution ought to have produced the M.O. coupon of Mahim. On the other hand the learned judge ought to have held that if this plea is true it is exclusively within the knowledge of the appellant and it was his burden under sec. 106 of the evidence Act.

5. The learned judge ought to have rejected the plea of the appellant that P.W.1 and P.W.2 foisted this case against him with the connivance of one J.M.Pinto on account of enmity. This accusation is belated and is put forward only in the Trial court for the first time. The Learned Judge ought not to have attached any importance to this plea.

5. The learned Judge ought not to have attached any importance to the evidence of P.W.3. His evidence in fact is not helpful to anybody. Even without his evidence the evidence of P.W.1 and 7 and Ex.P. 1 and 11 are alone sufficient to prove the prosecution case.

7. The several conclusions of the judge are based on a wrong approach and ~~peruse~~ perverse appreciation of the evidence. They are more ~~hurt~~ imaginary than factual.

8.The reasons given for rejecting the evidence of P.W.1 and 2 are not cogent and their evidence do not warrant such a finding.

9. The learned judge was wrong in accepting the bare suggestions

~~of the appe~~

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of the appellant and that in the face of the prosecution evidence.

-True copy-

For Addl.Dt.Magistrate(I)

3/9

IN THE COURT OF SESSIONS, SOUTH KANARA

Present: Sri P.Kandanarasimha Chettiar, L.A.B.L.,
Sessions Judge

Thursday, the 30th day of July 1954

Criminal Appeal No.58 of 1954.

From what court the appeal is preferred)	From the Court of the Principal Assistant Sessions Judge, South Kanara.
Number of the case in that court.)	Sessions Case No.8 of 1954.
Number of the appeal.	C.A.No.58 of 1954.
~~Name~~ Number and description) of the appellant.)	C.Jalaluddin Yusuf, son of Abdul Aziz, of permude, Mangalore taluk and former post Master of Permude Branch post ~~Master~~-of office.(Accused)
The sentence and law under which it was i posed in the lower court.	Appellant (accused) sentenced to undergo rigorous imprisonment for two years on each of the two counts under section 409 I.P.C and sections 467 and 471 I.P.C the sentences to run concurrently.
Whether co firmed modified or reversed and if modified the modification.)	Reversed

Date of or on which

Presentation: 21.6.54

8

'iling: 21.6.54.

otice issued by court to appear: 30.6.54.

Bail bond if appellant as been le out on bail: 22.6.54.

Appellant ordered to a pear: 20.7.1954; Hearing - 22-1-54

~~Hearing~~ Order: 30.7.54.

'is arp al coming on for earing before me, upon perusing the petition of appeal, and the records of the evidence and proceedings a d upon duly co sid ring the sam after hearing the arguments of Sri M. L.Suvarna, Sri B.Gangadhar Das, and Sri S.P.Lobo, advocates for the appellant and the Public Prosecutor contra, I do adjudge and pass the following

J' DGME'T

is is an appeal by the accused in Sessions Case No.8 of 1954 on the file of the Principal Assistant Sessions Judge South anara against e conviction of he appellant under section 409 I.P.C and under section 467 read with section 471 I.P.C and sentence of 2 years rigorous imprisonment under each of the two counts.

2. he prosecution case is, in short, as follows: P.W. 2 is the son of P.W.1. He sent R.25/- by Money order to P.W.1 from agapada Post office,Bombay. P.W.1 is a sident of a village at Paduperar. He had to receive the money order through e branch post office at Permude of which the accused is the branch post master. Permude is two miles from Paduperar That money order covered by M.O.3994 was received by the branch post Master. It is purported to have been disbursed on 28.8.1952 by the accused to the P.W.1. But it was not disbursed on that date, and he amount was not paid to P.W.1 on 28.8.1952. The thumb marks obtained on the M.O.acknowledgement (Exhibit P-3) and the M.O voucher (Exhibit P-4) relating to M.O.3994 are not of the P.W.1. P.W.1 was paid the amount of the money order on 17.9.1952. He wrote a letter to his son. His son P.W.2 filed a complaint to the post office. The thumb marks obtained on the money order form and the voucher (Exhibits P-3 and P-4) were sent to the Finger Print Bureau at Vellore along with the thumb marks of the P.W.1 taken by P.W.9 the Sub Inspector of Police. The opinion of the Finger Expert was received —

o the effect that they do not tally with the thumb marks of the P.W.1. The accused gave a statement before the Inspector of Post offices that he took the thumb impressions of P.W.1 in M.O. form 3994 at two places and paid the amount of Rs.25/- to P.W.1 on 28.8.1952. The accused is therefore, guilty of the offence of forging the M.O voucher and M.O. acknowledgement and using the same as genuine and he is also guilty of criminal misappropriation.

3. The accused pleaded not guilty to both the charges.

4. 10 witnesses were examined for the prosecution. The learned Assistant Sessions Judge found that the accused is guilty of both the charges and convicted and sentenced the accused on both the counts as above said, ordering the sentences to run concurrently.

5. The points for determination in the appeal are:-

1. Whether the accused is guilty under section 409 I.P.C?

2. Whether the accused is guilty under section 467 I.P.C read with section 471 I.P.C?

6. Point 1. Exhibit P-3 is the M.O paid acknowledgement relating to M.O.3994 for Rs.25/- and bearing a thumb mark purporting to be that of the payee and bearing attestation of P.W.3 Exhibit P-4 is the M.O paid voucher relating to the M.O. 3994 bearing the thumb mark purporting to be that of the payee and bearing attestation of P.W.3 The prosecution case is that the accused did not pay the amount on 28.8.1952 the date mentioned in Exhibits P-3 and P-4 but on 17.9.1952 and that the thumb-marks in exhibits P-3 and P-4 purporting to be those of the payee are not that of P.W.1 who is the payee mentioned therein.

7. P.W.1 is the payee. He admitted that the accused paid the amount of Rs.25/- as the amount of the money order sent by his son P.W.2. But, he would say that he was paid that amount of Rs.25/- covered by that money order No.3994 on 17.9.1952 and not earlier. In the cross examination he said he is illiterate and did not know the dates or months. He

did not say who attested when he affixed his thumb marks in the two places in the money order form i.e the acknowledgement portion,and the voucher portion. But, in the cross examination said that P.W.3 is known to him from his younger days and is on good terms on him and that P.W.3 might have attested is thumb impressions prior to this occasion of this money order. But, he went back and on his statement and said he did not remember whether P.W.3 had attested money order forms in which P.W.1's thumb impressions were affixed. He did not definitely state that P.W.3 did not attest in the money order form relating to the money order of Rs.25/- which was paid to him by the accused. That omission is very significant in view of the fact that P.W.3 is examined as the attestor, who signed in Exhibits P.3 and P.4 relating to the above said money order.

6. P.W.1 said that he wrote a letter Exhibit P-1 on the date when he received the money order and that he received the money order on 17.9.1952. But, exhibit P-1 is dated 18.9.1952. He also said that he got Exhibit P-1 written by Isac Pereira who was examined as a witness in the committal court. But, in the cross examination he said that he told the police that he did not know as to whether Isac Pereira or Dona Moras write Exhibit P-1. To the next question he stated that the Sub Inspector showed Exhibit P-1 and he stated that Isac Pereira wrote the letter. P.W.1 said that P.W.1 told him that Exhibit P-1 was written under the directions of P.W.1 by Isac Pereira or Dona Moras and that he (P.W.1) was unable to say who out of these wrote that letter. In the chief examination P.W.1 said that the inland letter Exhibit P.1 was sent to him by his son and his son had written his own address on it, while sending it to him along with the M.O. receipt Exhibit P.3. But, in the cross examination he admitted that he deposed in the committal court that the inland letter Exhibit P-1 was in his house that he gave the address of his son to Isac Pereira and after he gave

that address, Isac Pereira wrote it. Isac Pereira does not know English as evident from Exhibit P-18, the deposition of Isac Pereira in the committal court. Therefore from the above it is clear that P.W.1 is one who has no respect for truth but he is prepared to invent and speak lies. P.W1 admitted that P.W.3 is not one who would deceive him and that he and P.W.3 are on good terms.

9. There is the definite evidence of P.W.3 that he attested Exhibit P-3 and P-4 that the amount of the money order was not paid in his presence but that P.W.1 told him that he had received the same. He also said that the accused was inside the post office when he attested Exhibits P.3 and P.4 that they were given to him for attestation by P.W.1 and that when P.W.1 gave the same, the thumb impressions therein were already there. Further he said that P.W.1 used to get money orders often and sometimes the accused used to tell him that he had paid the amounts to the payee and in the confidence he had in the accused he used to attest the M.Os acknowledgement.

10. In the cross examination he definitely stated that P.W.1 had with him Rs.25/- and a coupon in his hand. As P.W.3 had confidence in the accused and as P.W.1 stated to him that he had received the amount and had in his hand the money of Rs.25/- in his hands and brought the money order form, consisting of Exhibits P.3 and P.4 to P.W.3 for attestation there is nothing in P.W.3 attesting Exhibits P.3 and P.4 believing that the thumb impressions already there were those of P.W.1.

11. Before the postal Inspector P.W.3 gave a statement on 17.11.1952. It is exhibit D.1. He stated then that when he attested in the M.O form he saw the date of payment and the remark therein that it was the ~~thumb~~ thumb impression of P.W.1 written already in the M.O form. He also stated before the postal Inspector that he knew P.W.1, that P.W.1 used to receive money orders and to get the money order forms to him (P.W. 3) in which his thumb impressions had been obtained,

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that he used to inquire P.W.1 whether he had received the payment of the money-order and then sign and attest the money order form, but only when the P.W.1 said that he had received the payment of R.C and that thereafter P.W.1 would take the form and give it to the Postmaster and go away.

12. With regard to this money order of R.25/- he stated also before the Postal Inspector that accused sent for P.W.1 and P.W.1 came that he saw the currency notes in the one hand of P.W.1 and the money order form in another hand, that they were five-rupee currency notes, that P.W.1 said that those currency notes were the money order amount sent by his son, that it was paid to him, but when P.W.1 brought the form there were already thumb impressions, that he asked P.W.1 whether he had received the amount and after that question he attested. With regard to the time of payment he said it was within 2 months and not more than 2 months. But, in view of his definite statement that he saw the date of payment when he attested and as his attestation was not taken in September 1952 there is no doubt of the fact that he attested only on 28.8.1952. The statement of P.W.3 that in the Sessions court that there was no date in the money order form is not of any significance, because he stated that he did not put the date. The registers kept by the accused exhibits P.10 and P.10(a) show that the payment of R.25/- covered by M.O.3994 was on 28.8.1952. Exhibit P.9 also shows that in the daily account the amount paid is entered. That ~~accused~~ account was sent on 29.8.1952 the next day itself.

13. To prove that P.W.1 was paid on 17.9.1952 and not earlier. The prosecution relies on the evidence of P.W.1 and the letter Exhibit P.1 written at the instance of P.W.1 to his son P.W.2. I have already stated that the P.W.1 is not a trustworthy witness.

14. Exhibit P.1 is dated 18.9.1952. So it was not written on the alleged date of payment namely 17.9.1952 as stated by P.W.1. P.W.2 said that he sent this inland letter to his father and after writing his address therein. In spite of getting such a letter with his son's address written, P.W.1

went to the extent of saying that Pereira wrote the address. But he subsequently changed his version and said that his son sent it with address already written on it. P.W.1 or P.W.2 did not depose that any letter passed between 25-8-1952 and 17-9-1952 If P.W.1 had not received the amount within 3 or 4 days after 25-8-1952 he would certainly have written to his son P.W.2 that he did not receive any money order. In the cross examination of P.W.2 it was suggested that there was an altercation between him and the accused two years before he was being examined i.e. in 1952 and that P.W.2 told the accused that he (P.W.2) ~~told the accused that he (P.W.2)~~ would teach a lesson to the accused but P.W.2 denied the suggestion. But, the accused stated that P.W.2 and one J.M., ~~Exx~~ Pinto have been on inimical terms with him.

15. P.W.3 stated that P.W.1 and J.M. Pinto are on friendly terms. P.W.2 admitted that he did not tell the Police that the inland letter without writing contents was enclosed in a cover written by him to his father. If P.W.2 had sent Exhibit P-1 in a cover he would have sent it along with another letter stating the purpose why he sent that inland letter. But, that letter is not produced.

16. P.W.2 said that his father P.W.1 sent the blank M.O. coupon along with another letter and not with exhibit P-1. But, that letter with exhibit P-2 was sent is not produced. P.W.2 says that it is not with him. Evidently he suppresses it. He did not even mention this to the police.

17. Exhibit P-2 paper is of yellow colour and in that coupon nothing is written. It is improbable that P.W.2 would not have written anything in the coupon. On the other hand P.W.2 definitely stated in his cross examination that he had written in kannada script and in Konkani language in the M.O. coupon and had asked his father therein to write to him as soon as money order was received by him. But, exhibit P-2 is blank without writing o P.

18. Exhibits P-3 and P-4 show that the paper of that form is of white colour. Secondly the printed matter in exhibits P-3 and

P.W.4 (which the remitter and payee have to note) is in Hindi and not in English. But, exhibit P-2 contains printed matter in English. P.W.2 said he wrote in Konkani language in the M.O.-coupon. P.W.1 did not say that his son did not write anything in the coupon. Supposing it was a blank coupon without matter P.W.1 would have mentioned in Ex.P1 about P.W.2's omission in not having written anything in that coupon. But Ex.P.1 is silent. It does not mention that the M.O. coupon was blank. P.W.1 had not produced the letter referred to in Ex.P.1 and alleged to have been written by P.W.2 and received by P.W.1 on 17-9-1952. That is a very material suppression. It was P.W.1 who took the money order form to P.W.3 for attestation. If it was a yellow form and if P.W.3 attested it, P.W.3 would have attested in that yellow form for a second time, but P.W.3 did not say that he attested in respect of two money orders received by P.W.1 one in August and one in September 1952.

19. All these show that Ex.P2 has been introduced purposely to bolster up a theory that subsequent to 28-8-1952 the accused disbursed the money order of Rs 25/- on 17-9-1952 and gave this exhibit P.2 yellow coupon by tearing it from the yellow money order form. But, as I said above, since P.W.2 has definitely stated that he wrote in Konkani language but in Kannada script in the coupon, that statement also shows that the prosecution case that the delivery of money order was on 17-9-1952 is not true.

20. P.W.2 did not say that after sending the money order of Rs 25/- on 25-8-1952 he wrote a letter, subsequently, to his father inquiring whether P.W.1 received the money order sent by him on 25-8-1952 and even P.W.1 did not produce the alleged letter referred to in Ex.P1. At the end of his cross examination P.W.1 said that he did not receive any letter from his son informing that he had sent the amount (of Rs 25/-) to him (P.W.1). Therefore, the recital in Ex.P1. that P.W.2 wrote a letter and that it had reached P.W.1 on 17-9-1952 is false. It, therefore follows that exhibit P.1 would have been got specially written with such false recital at the instance of P.W.1 with an ulterior motive which in the circumstances of

the case appears to be to implicate the accused. It is also probable that P.W.2 who has had a grudge against the accuse wrote to his father how to implicate the accused and the latter, referred to in exhibit P.1 might be the last of such letters and therefore it is not produced. I have already referred to the discrepant evidence of P.W.1 regarding the writing of exhibit P.1. Therefore exhibit P.1 is not a document with true recitals, but one purposely got written with mal fide motive. It cannot be relied upo

21. The learned Assistant Sessions Judge has mainly relied on the evidence of Finger Print Expert P...7 who gave his opinion that the thumb marks in exhibits P3 and P4 do not tally with that of P.W.1 or o thumb mark of the accused, which P. 9 took for purpose of comparison. But, in the present case the circumstance that the thumb mark in exhibit P.3 does not tally with that of the P.W.1 is not conclusive on the points for decision. Because, for one thing, payment on 28-8-1952 itself of Rs 25/- covered by M.O.3994 is borne out by the entries in exhibits P. 7A and P. 10A made by the accused in the usual course of his daily official work and the direct evidence of P.W.3 in the chief examination and in the cross examination and also by his statement before the Postal Inspector, viz., exhibit D1 to which I have already referred above, proves beyond any doubt that P.W.1 not only admitted before P.W.3 his having received Rs 25/- as the amount of money order, but also the five currency notes of Rs 5/- denomination in his hand along with the M.O. coupon which was of a white colour as stated by P.W.3. Such admission of receipt of payment of that sum was on the date when P.W.3 attested in exhibits P.3 and P.4. The money order form was despatched in due time and P.W.2 received the exhibits P.3 in due course. On the other hand there is no evidence to the contrary corroborating that of P.W.1 who said that he received the money order on 17-9-1952. P.W.1 ~~who said that he received~~ stated that were some persons present. But, he would say that he did not know names of such persons. P. .1 did not state that in the money order form relating to such payment anyone other than P.W.3 attested. P.W.3 is known to him from his younger days. He admitted that he and P.W.3 are on good terms and that P. .3 is not one who would deceive him. Therefore, P. .3 could

not have colluded with the accused in getting up a forged document P.W.3 is the authorised signatory whose shop is in the same building where Branch Post Office is located, unless he is a trustworthy person he would not have been recognised as an authorised signatory. I, therefore, have no hesitation in holding that the evidence of P.W.3 cuts at the root of the prosecution case that the payment of Rs 25/- to P.W.1 was on 17-9-52.

22. Reliance is placed by the prosecution also on exhibit P.11 which is a statement of the accused recorded by the Postal Inspector, P.W.6 on 17-11-~~9152~~ 1952 to the effect that he the accused took the thumb mark of P.W.1 in M.O. form 3994. But, the accused stated when he was questioned under section 342 Cr.P.C. that at a time 3 or 4 money orders would be received in his office and he used to make payments to pay his simultaneously and therefore a mistake might have occurred in taking the thumb impressions of the payees. His suggestion is that on the day when the thumb impressions of P.W.1 were taken on 28-8-1952 some other money order payments were made and that at that time the thumb marks of some other payee were by mistake got affixed in the money order form relating to the other person. M.O.No. 3994 on the thumb marks of P.W.1 were got affixed in

23. In this case, the prosecution relies on the circumstance that on 28-8-1952 ~~xxxx~~ only two money orders were disbursed ~~a~~ according to the postal registers i.e. one relating to 3994 and the other relating to M.O. No 3763 in which the payee was one Mahim. But, the prosecution has not cared to produce the M.O. paid voucher relating to M.O. 3763 ~~xx~~, similar to M.O.4 in the case relating to 3994. Even the postal authorities have not cared to produce it, the M.O. paid voucher of No. 3763.

24. The argument on behalf of the accused is that if that voucher is produced that will show conclusively that by mistake P.W.1's thumb marks were affixed in the money order form No. 3763 and Mahim's thumb mark were got affixed in the form of No. 3994. Mahim is not examined. His thumb mark is not taken. Either his thumb mark should have been taken for comparing it with that in exhibits, P.3 and P.4, or, that M.O. paid voucher portion of M.O.3763 similar to M.O.4 must have been produced to show that the M.O.3763 bears the thumb mark

of Mahim himself and at no such mistake was committed by the Post Master. In this view, the omission to produce the other M.O. paid voucher of P.C. 3763 and to examine Mahim is a fatal omission in the prosecution case.

25. It is true that P.W.1 did not mention when he gave statement exhibit P.11 that such a mistake might have occurred. But, it is not difficult to assume that if the accused had expressly admitted before the Postal Inspector that such mistakes had occurred he would have been found guilty of negligence and his services would have been dispensed with. It is not improbable that the accused did not mention about any such mistakes due to fear that his superior officer would find fault with him or negligence and take action immediately.

26. P.W.3 has definitely stated that the accused is one of the rich persons of Permude living with his brothers in the same house which is worth Rs 15000/- that the accused has been the President of the Co-operative Society in the village for the last 10 years and that the brothers of the accused are cultivating lands directly getting about 50 mooras of rice and at one his brothers is sending Rs 100/- or Rs 200/- to the accused every month. Therefore, the accused cannot have any motive to misappropriate a paltry sum of Rs 25/- for a temporary purpose and also forged document, exhibits P.3 and P.4 for such purpose. No motive to the accused is attributed to defraud P.W.1 On the other hand the accused has stated that P.W.2 and J.M. Pinto are close relations and are on inimical terms with the accused. P.W.3 has deposed that Pinto and P.W.1 are on friendly terms. Therefore no importance can be attached to the statement of one of the prosecution witnesses that J.M. Pinto complained to the postal authorities that the the accused was not disbursing postal money orders properly. No complaint against the accused by the public against the accused is proved.

27. The learned Asst. Sessions Judge has observed thus:

'A faint attempt has been made by the defence to show that P.W.2 and J.M. Pinto afor said are good friends and that they hatched a plan to give trouble to the accused in this manner.

But, he has attached importance to the statement of P.W.2 that P.W.2 does not know J.M. Pinto at all. This statement cannot be believed as P.W.3 has stated that J.M. Pinto is his neighbour and he is employed at Bombay and is a friend of P.W.1 and therefore P.W.2 must have known that Pinto as the friend of his father.

28. The accused also suggested in the cross examination of P.W.2 that when P.W.2 had been to the village sometime before 1952 there was some altercation of words between him and P.W.2 and that P.W.2 threatened the accused saying that he would teach the accused a lesson. It is therefore not improbable that P.W.2 would have instigated his father to play a dirty trick and get the thumb mark of someone else in the money order form when the accused is not attentive and watching particularly the affixing of thumbmarks in the M.O. form. P.W.3 deposed that P.W.1 used to get money orders often. Therefore it is not improbable that at the instigation of P.W.2, P.W.1 would have been watching and waiting for an opportunity when the accused would be in-attentive or negligent in the matter of getting affixed thumb mark by the payees and it is probable that on 28-8-1952 when the accused was inattentive, P.W.1 would have affixed his thumbmarks in M.O. 3763 and given M.O. 3994 to Mahim for Mahim's affixing of thumb marks and thus played a dirty trick on the accused, who is an old man of 56 and having poor sight, as argued by the accused's counsel. P.W.1 has stated that there were other persons when he affixed his thumb mark. He has not stated Mahim was not present. It is not proved that the money order amount to Mahim was not paid simultaneously with another on 28-8-1952. In this context, the omission to examine Mahim or to get the M.O. paid voucher relating to M.O. 3763 is significant. If he is examined or his thumb mark is compared with that of exhibit P.3 or P.4 or if M.O. paid voucher of 3763 is produced it will reveal the plan of the P.W.2 and J.M. Pinto to get the accused into trouble.

29. To sum-up the definite evidence of P.W.3 that on the date when he arrested exhibits E3 and P.4 which cannot but

be 28-8-1952, P.W.1 had Rs 25/- in his hand and expressly admitted that amount as the money order amount received from his son and he brought the M.O. form for his attestation and P.W.3 attested it in two place, i.e., exhibits P.3 and P.4. That is enough to prove that the accused had paid Rs 25/- to P.W.1 and made two entries in exhibits P.7A and P. 10A in the usual course of his official duties on 28-8-1952. It, therefore, follows that the accused did not misappropriate the sum of Rs 25/- of M.O. 3994. When there was no misappropriation, he cannot have a motive to forge exhibits P.3 and P.4 with intent to use them as genuine documents knowing them to be forged, as contented by the prosecution.

30. For the reasons above said and in the circumstances and probabilities of the case, I find that it is not proved beyond any reasonable doubt that the accused is guilty of criminal misappropriation and of the offence of forgery. The accused is entitled to the benefit of doub I hold that he is not guilty of any of the charges framed against him.

31. In the result, the conviction and sentence passed against the accused in respect of the two charges are set aside and that the accused is acquitted. His bond is cancelled.

Dictated to the short hand writer, transcribed by him corrected and pronounced by me in open court, this 30th day of July 1954.

-True copy-

3.9.54

For Addl.Dt.Magistrate (I)
~~(I)~~

IN THE COURT OF SESSIONS SOUTH KANARA MANGALORE

JUNE SESSIONS

PResent:Sri T.S.Anavardham M.A.,B.L.,

Principal Asst.Sessions Judge
Friday the 18th day of 1954

Sessions Case No. 8/1954
(P.I.No. 80/1953 of Mulky Police Station)

Name of the accused	G.JALALUDDIN YUSUF
Charges	1.Criminal breach of trust by public servant, Section 409 I.P.C 2. Forgery of valuable security and using as genuine a forged document Sections 467 and 471 I.P.C.
Name of Assessors	Messrs: 1. Rangha Narkera (Harijan) 2. Madhava Nayak Manel(G.S.Brahmin) 3. Kamalaksha Sarvothama Kamath(do) 4. B.Srinivasa Kini – do –
Opinion of Assessors	All the four assessors opined that the accused is guilty of the charge under section 409 I.P.C. As regards the 2nd charge, Assessors Nos.1 and 2 opined that

	the accused is not guilty, while Assessors Nos 3 and 3 opined that he is, guilty of that charge as well
FINDING OF THE JUDGE	The accused is guilty of both the charges framed against him.
Sentence	The accused is convicted under both the charges mentioned above, and sentenced to undergo rigorous Imprisonment for a period of 2 years on each of the said two counts, the sentences to run concurrently. He will be lodged in the Central Jail, Cannanore

The case was committed to Sessions by Sri W.A.D'Sequeira B.A., Stationary Sub Magistrate Mangalore, in R.C.No. 11/1953 on his file and was transferred to this court by the Sessions Judge, South Kanara for disposal by this court.

Sri B.G.Das, Advo-cate, defended the accused

JUDGMENT

The accused was the Post Master at Permude. The two charges against him are for offences under section 409, and section 467 read with section 471. I.P.C. The first charge is that on or about 28.8.1952 he was entrusted with a sum of Rs.25, covered by M.O.No.3994, in his capacity s the Branch Post Master at Permude and payable to Piad Pinto, But that he committed criminal breach of trust in respect of the said amount The second charge is that at or about the same time, he used the M.O. paid voucher and acknowledgement for M.O.No. 3994 as genuine documents with knowledge or with reason to believe that they ha were forged ones. The accused pleaded not guilty to the charges. He was defended.

2. The first witness for the prosecution is Paid Pinto, the payee named in the Money order No. 3994. His son P.W.2, Inthru Pinto is the remitter of the M.O. The M.O. was sent from Nagapada Post Office at Bombay on 25.8.1952. It was received in the Sub Post Office at Bajpe, of which P.W.4 is the Post Master on 28.8.1952 and despatched to the Branch Office at Permude, of which the accused was the Post Master on

the same day. The case for the prosecution is that though the registers kept by the accused in the Post Office show that the payment under the Money Order was made to P.W.1 on 28.8.1952, as a matter of fact, the payment was made only on 17.9.1952 and that therefore he is guilty of the offence under section 409 I.P.C. The prosecution relies upon the evidence of P.Ws 1 and 2 and another witness who was examined in the lower court, i.e. Isaac Pereira, besides the recitals in Exhibit P1. a letter written by P.W.1 to P.W.2 his son at Bombay, on 18.9.52, to show that the payment was actually made on 17.9.1952. It also relies upon the opinion given by the Finger Print Expert attached to the Finger Print Bureau at Vellore to show that the thumb impressions in Exhibits P3 and P4, the money order paid voucher and acknowledgment in regard to the M.O.in question are not those of P.W.1 In both/them of we find the date 28.8.1952 noted.

3. P.W.1.stated that the last M.O. which he received from his son P.W.2 was for a sum of Rs.25, that it was paid over to him by the accused about 2 years back and that on the date he received the payment he wrote the letter Exhibit P1 to his son. That letter is dated 18.9.1952. The recitals therein are to the effect that on 17.9.1952 P.W.1.received the M.O. The scribe of the letter is Isaac Pereira who was examined in the lower court and whose deposition has been marked as Exhibit P 18, on the ground that it was not possible to produce him before this court without unreasonable delay and expense.P.W.1.,is an illiterate person. He deposed that 2 or 3 days prior to the receipt of the Money order, he enquired of the accused whether he ~~did~~ had any M.O. but that a negative reply was given. According to P.W.1 the accused gave him a slip similar to Exhibit P2 and that it was handed over by him to the Postal Inspector when he was examined. There is someslight discrepancy between the evidence of P~~W~~1 and P.W2 in regard to the number of money orders sent by the latter to the former. But it is not a material one. It was elicited in the cross examination of P.W.~~2~~1 that Exhibit P1 was not read over to him by Isaac Pereira.

According to P.W.1, the Inland letter form on which the letter exhibit P1 has been written had been sent to him by his son with the address written on it. In cross examination P.W.1 stated that in the lower court he had deposed that the Inland letter was in his house and that he gave the address of his son to Isaac and that the latter wrote the same on it. But if we turn to Exhibit P.18, Isaac Pereira has assented, that he cannot read or write English, but that he can only sign his name in English. The address as well as the sender's name in Exhibit P1 are in English. Isaac Pereira has further stated that as per the instructions given by P.W.1 he wrote exhibit P1 on 18.9.1952 and that it is in respect of the money order for Rs.25. There is no doubt that the Inland letter form with the address written was sent by P.W.2 to P.W.1.

4. The second witness for the prosecution, the remitter of the money order, has also given evidence to the effect that he sent the Inland letter form, with the address as well as the sender's name noted by him to his father and that he got Ex.P1 from the latter. According to him Exhibit P3, the postal acknowledgment in regard to the M.O. was received by him on 1.9.1952 and that he learnt that the amount was paid to his father only on 17.9.52. He has written to his father another letter, Exhibit P5, on 20.10.52 referring to the complaint given by him to the Postal authorities about the delayed payment of the money order, and he also gave some instructions as to what further steps should be taken in the matter. It is further stated in that letter that P.W.2 is returning a receipt to his father. The complaint given by P.W.2 to the Postal authorities at Bombay is Exhibit P6 dated 10.10.52. There it is stated that the money order was paid to P.W.1 only on 17.9.52. There was a suggestion to P.W.2 that about 2 years back when he had come over to his village from Bombay, himself and the Postmaster, the accused, fell out when enquiries in regard to certain Postal articles were made by him and that he avowed to teach a lesson to him. He denied the suggestion. Apart from this suggestion, there is nothing to show that the relationship between the accused and P.W.2 was in any manner strained. Exhibit P.2, the M.O coupon, is of yellow colour, whereas Exhibits P3 and

P4, the M.O.paid voucher and acknowledgment, are of white colour.

5. The prosecution has examined P.W.3, the attestor to Exhibits P3 and P4 as well. P.W.3 runs a shop in the same building in which the Post Office at Permude is located. His evidence was that when P.W.1.gave him exhibits P3 and P4, the thumb impressions were there, but that when he attested, there was no date in them and that the amount was also not paid in his presence. No doubt, he has also stated that P.W.1 represented to him that money had been received by him. Towards the end of his chief examination, he would state that as he had not put the date in exhibits P3 and P4 and as, he had attested other Money orders as well, he cannot say whether they were brought to him by P.W.1. He has given th statement Exhibit D1. when the Postal authorities enquired into the matter in November 1952. He declared that, as found in Exhibit D1 (a), he might have stated that when he signed in the M.O. form, the date had been written and that it was also written that the thumb impression was that of P.W.1. From the evidence of P.W.3, it cannot be concluded that on 28.8.1952, the sum of Rs.25/- covered by M.O. 3994 had been paid over to P.W.1. by the accused. He has given two reasons as to why he cannot say as to whether Exhibits P3 and P4 were brought to him by P.W.1.

6. P.W.4 is the Post Master at Bajpe from October 1951. He has spoken about the procedure to be adopted for sending the M.Os to the Branch Post Office such as the one at Permude. He also proved the Branch Office,Journal, Exhibit P.10. maintained by the accused, and the relevant entry Exhibit P.10 (a). According to that entry, the payment of Rs.25 covered by M.O.No. 3994 was made on 28.8.1952. In Exhibit P9, the Branch Office daily account sent by the accused on 29.8.1952 to the Sub Office at Bajpe it is noted that the amount covered by this Money order was paid.

7. P.W.7, the Finger Print Expert attached to the Finger Print Bureau at Vellore examined the thumb impressions of P.W.1 in Exhibit P.13 and that of the accused in Exhibit P.14, and compared them with the impressions in Exhibits P3 and P4. He

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stated that the impressions in Exhibits P 3aa and P4 are not identical with that in Exhibit P 13 and those in Exhibit P 14. It was P.W.9, the Station House Officer at Mulky, that obtained the thumb impressions in Exhibits P 13 and 14. and forwarded them along with Exhibits P3 and P4, to the Finger Print Bureau. The accused in his statement admitted that the thumb impressions were taken by P.W.9.

8. Another document on which the prosecution relies to prove the charges, is Exhibit P 11, the statement of the accused recorded by P.W.5, the Inspector of Post Offices on 17.11.1952, when he conducted an enquiry. The accused stated before him that ~~P.W.1~~ P.W.1 came to him at about 12.45 p.m. on 28.8.1952, that he took his thumb impression on the M.O. form No. 3994. at two proper places on a table inside the Post Office room, and that thereafter he gave him the amount of Rs. 25/- in the shape of five currency notes of Rs. 5/- each. He has also stated that the date of payment and the remarks that that was the thumb impression of Paid Pinto were written by him in the M.O.form as well as in the M.O. acknowledgement form, the latter of which was seen by him then. When asked about the correctness of this statement, Exhibit P.11 the accused said that himself and P.W.5 did not understand the language of each other and that as he (P.W.5) was an officer, he could not say much. He further stated that P.W.5 told him what he had written but that he (P.W.5) had not properly understood that he represented. When specifically asked about his statement in Exhibit P11 that he had taken the thumb impressions of P.W.1 in two proper places in the Post Office itself and that ~~therefore~~ after the amount was paid, he gave the following answer:

"He P.W.5, asked me whether the thumb impressions were those of Paid Pinto. I said, how could I say now ? The address was at the top. According to it, I said that the thumb impressions might be those of the payee "

When the accused was asked about the evidence given by the Finger Print Expert, he stated that only in the Committal court he came to know that the thumb impressions are not idential. that at a time

three or four M.Os would be received, that payments would be made simultaneously and that a mistake might have occurred in taking the thumb impressions. He also stated that his eyesight was not good. In the course of the statement before the lower court, which is marked as Exhibit P 19, the accused has stated that he obtained the thumb impression of P.W.1 on 28.8.1952, but that it is possible that due to short sight he obtained the impression in a different M.O. It was argued on behalf of the accused that as Exhibit P8, the Branch Office slip sent by P.W.4 to the accused on 28.8.1952, shows that there were 3 money orders to be disbursed by the latter, it is just possible for him to have made a bonafide mistake by obtaining the thumb impression of one payee in a different money order paid voucher as well as the acknowledgement. A perusal of Exhibit P 10 would show that on 28.8.1952 only two money orders, i. e. the one in question as well as another bearing No. 3763, were entered as having been paid. The money order No. 3763 is for one Rahim. It was kept undisbursed with the accused for some days prior to 28.8.1952. It was argued by the defence counsel that the prosecution should have obtained the M.O. paid voucher as well as the acknowledgement in regard to the other M.O. or M.Os paid on 28.8.1952 and thus show beyond all doubt that they too do not contain the thumb impressions of P.W.1 and that, therefore the accused must have forged the thumb impressions of another person in Exhibits P3 and P4 and committed criminal breach of trust in regard to the amount covered by it. The prosecution has shown that the thumb impressions in Exhibits P3 and P4 are not those of P.W.1. The accused has made a statement in Exhibit P 11 that in the M.O. form No. 3994, he obtained the thumb impressions of P.W.1 If as a matter of fact, the accused had made a ~~bonafai~~ bonafide mistake in obtaining the thumb impressions, he could have stated so before the Postal authorities.

9. It was pointed out by the defence counsel that as the letter, Exhibit P1 is dated 18.9.1952, no importance could be attached to it in as much as P.W.1 has stated that on the date he received the M.O. i.e.17.9.1952, this letter was written. The Postal seal on Exhibit P1 bears the date 18.9.1952. That is the date given inside the letter as well. The circumstances pointed out is too slender a one from which it cannot be concluded that Exhibit P1 is not a genuine one. It was also argued that as P.W.2 gave instructions to his father in Exhibit P5, the letter, as to what further steps should be taken in regard to the complaint laid by him to the Postal authorities, it must be concluded that this letter was got up with a view to incriminate the accused. The argument is not acceptable. There is some evidence to show that one J.M.Pinto complained that the accused was not disbursing Money Orders properly. A faint attempt has been made by the defence to show that P.W.2 and J.M.Pinto aforesaid are good friends and that they hatched a plan to give trouble to the accused in this manner. P.W.2 has stated that he does not know J.M.Pinto at all. The non examination of Isaac Pereira, the scribe of Exhibit P1 was adversely commented upon by the defence counsel. In fact, objections were raised when Pereira's deposition in the lower court was marked as Exhibit P18. The case came up for hearing on 10.4.1954. The Prosecution moved for an adjournment on the ground that two important witnesses, P.W.2 and Isaac Pereira who was examined in the Committal Court, could not be served with summons at Bombay and that the prosecution had not been able to contact them. The case was adjourned to 14.6.54. The prosecution has taken all efforts to have the witnesses at Bombay served. P.W.10 was deputed to Bombay by the Sub Inspector at Mulky to serve the summons on Isaac Pereira. The summons was served on him on 10.6.1954. The Constable, P.W.10 has given evidence to the effect that Isaac Pereira represented to him that he lost his job when he came over to give evidence in the Magistrate's Court, that he got employed recently and that it is not possible for him to attend the Sessions Court. It was on the strength of his evidence that the prior deposition of Isaac Pereira was marked. The defence counsel also drew my attention to the fact that P.W.3 has made a statement in Exhibit D1 that he saw the dates in the M.O. as 28.8.1952

3P besides the remarks that the thumb impressions were those of P.W.1; and pointed out that his present evidence should not be accepted. His present evidence is that as he had not put the date ~~of~~ in exhibits P3 and P4 and as he had attested other M.Os he cannot ~~say~~ whether P.W.1 brought them to him for attestation. The argument put forward by the defence counsel is not acceptable.

10. The person who is to disburse the amounts covered by the Money Orders at Permude is the accused. The coupon is delivered over to the payee and the rest would be sent to the Sub Office by the Branch Post Master. Thus at Permude Post Office, the only person who had custody of the Money Order No.3994 was the accused. He has asserted that he obtained the thumb impression of P.W.1. It has been shown beyond all doubt that they do not contain the thumb impression of P.W.1. There is evidence to show that it was paid ~~over by the accused~~ only on 17.9.1952 that the sum of Rs.25/- specified in the M.O. in question was paid over by the accused to P.W.1. The defence counsel pointed out that the evidence only shows that the accused produced the receipts, and nothing more. The accused has made entries in the register, Exhibit P.10 that the sum of Rs.25/- was paid over on 28.8.1952. It is clear from the evidence that he had knowledge that Exhibits P3 and P4 contained the thumb-impressions of some one other than P.W.1 the payee. The accused received the sum of Rs.25/- in his capacity as the Branch Post Master. He did not disburse the amount on 28.8.1952 to P.W.1 as noted in his register. The payment has been made subsequently on 17.9.52. There is no doubt that the M.O. Paid voucher, exhibit P3, and the M.O. acknowledgment, Exhibit P4, are valuable securities. The prosecution has shown beyond all doubt that the accused committed criminal breach of trust, i.e., an offence punishable under Section 409 I.P.C. and that he used as genuine the document Exhibits P3 and P4 knowing them (i.e. thumb-impressions) to be forged ones, i.e. an offence punishable under Section 471 I.P.C. The defence counsel relied upon the decision reported in A.I.R. 1941 Madras 38 (In re-K.Sannayya) and pointed out that the charge under Section 471 I.P.C. cannot stand for want of the sanction by the Government to prosecute the accused. In that

case the charge was against a Post Man under Section 471 I.P.C. for mis-appropriating the amount of a Money Order entrusted to him by forging the thumb-impression of the payee, and for using the document by returning it to the Post Office. It has been held therein that the consent of the Governor General is necessary for the prosecution for an offence under Section 471 I.P.C. but that it is not bar to the trial of the offence under Sections 409 and 467 I.P.C. That was a decision given when the Government of India Act, 1935 was in force. The defence counsel did not draw my attention to the Section under the present law by which the sanction of the Central Government is contemplated. The decision relied upon would not, therefore, apply to the present case.

11. All the four Assessors were of the opinion that the accused is guilty of the offence under Section 409 I.P.C. i.e., charge No.1. Assessors Nos.1 and 2 were of the opinion that the accused is not guilty of the second charge. The remaining Assessors were of the opinion that the accused is guilty of the second charge as well. I agree with the opinion of Assessors 1 to 4 in regard to the first charge and with the opinion of Assessors Nos.3 and 4 in regard to the second charge, and I find the accused guilty of both the charges. I convict and sentence the accused for the offence under Section 409 I.P.C. to undergo Rigorous Imprisonment for a period of two years and for other offence also I sentence him to undergo rigorous imprisonment for a period of two years. The sentences will run concurrently. The accused is committed to the Central Jail at Cannanore to serve the period of his sentence.

Dictated to the Shorthand Writer, the transcript revised by me and Pronounced in open court this 18th day of June, 1954.

(Sd) T.S.Anavaradham

Principal Assistant Sessions Judge

APPENDIX OF EVIDENCE.

WITNESSES EXAMINED FOR THE PROSECUTION.

1. Sri Paul Pinto
2. Sri Inthru Pinto
3. Sri Cyril Misquith.

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4. Sri Sheik Ismail.

5. Sri B.K.Vasudevan (Investigating Inspector of Post Offices)

6. Sri A.T.M.Saldanha (Inspector of Post Offices.)

7. Sri M.Ganapathy (Finger Print Expert)

8. Sri K.Laxmana (Head Constable)

9. Sri B.Narayana Rao (S.I.of Police)

10. Sri Pius D'Sa (P.C.874)

WITNESS EXAMINED FOR DEFENCE

NONE

EXHIBITS MARKED FOR PROSECUTION:

P1.	18-9-52	Letter written by Plad Pinto (P.W.1) to Inthru Pinto (P.W.2)
P1(a)		Address on Exhibit P1
P1(b)		Sender's name on Exhibit P1
P2		Bank M.O.coupon.
P.3.	28.8.52	M.O.Paid acknowledgement relating to M.O. No.3994
P3(a)		Thumb Impression on Exhibit P3
P4	28.8.52	M.O-Paid voucher relating to M.O.No.3994
P5	2C.10.52	Letter written by Inthru Pinto (P.W.2)
P6	1C.10.52	Complaint preferred by Inthru Pinto (P.W.2) to the Presidency Post Master General Bombay
P7	17.7.52 to 6.9.52	Register of Money Orders received maintained at the branch Post Office Permude.
P7(a)	28.8.52	Entry relating to M.O.No.3994 -do-
P8	28.8.52	Branch Office slip relating to -do-
P8(a)		Entry in Exhibit B8 relating to M.O.No.3994
P9	29.8.52	Branch Office daily account sent by the accused as Branch Post Master. Permude.
P10	14.8.52 to 28.9.52	Branch Office Journal maintained by the Branch Post Master.
P10(a)	28.8.52	Entry in -do- relating to M.O.3994
P11	17.11.52	Statement of the accused recorded by the Inspector of Post Offices (P.W.5)
P12	5.9.53	Complaint filed by the Inspector of Post Offices (Sri A.T.M.Saldanha) to the S.I.Of Mulky.
P.13	6.9.53	Thumb Impression sheet of P.W.1 taken by Sri B.Narayana Rao (S.I.of Police)

P.14	6.9.1953	Thumb-impression sheet of the accused taken by Sri B.Narayana Rao (S.I.of Police
P.15		Photograph copy of the thumb impressions taken by the Finger Print Expert of the Bureau at Vellore.
P.16		-do- -do- taken by -do- in Ex.P3.
P.17	11.5.54	Summons issued to Isaac Pereira (PW.2 in the Committal Court)
P18	26.12.53	Deposition of -do- recorded by the Committing Magistrate.
P.19	22.2.54	Statement of the accused recorded by -do-

EXHIBITS MARKED FOR DEFENCE

D1	17.11.52	Statement of Cyril Misquith (P.W.3) record by the Inspector of Post Offices.
D1(a)		Portion marked in Exhibit D1
D1(b)		do do
D2	8.5.52	Reply from the Superintendent of Post Offices to the complaint filed by Sri J.M.Pinto

(Sd) T.J.A.
Principal Assistant Sessions Judge.

/True copy/

For Addl.Dt.Magistrate (I)

3/9

GROUNDS

1. The appreciation of oral evidence is erroneous. It is a negative approach.

2. The learned judge failed to appreciate the significance of Ex.P1 and the testimony of P.W.1 and 2. The learned judge ought to have accepted their evidence and confirmed the conviction.

3. The learned judge ought to have have relied on the recital in P.11. made by the accused.

4. The learned Judge ought to have held that the suggestion of the appellant that he disbursed M.O. simultaneously to several persons and that he might have obtained the T.1 on a differeat form, is only an afterthought by reason of the evidence of the P.P. expert ~~extent~~ in the committal court and ought to have accepted the statements made by the appellant in P 11. The learned judge was wrong in holding that the prosecution ought to have produced the M.O. coupon of Rahim. On the other hand the learned judge ought to have held that if this plea is true it is exclusively within the knowledge of the appellant and it was his burden under sec. 106 of the evidence Act.

5. The learned judge ought to have rejected the plea of the appellant that P.W.1 and P.W.2 foisted this case against him with the connivance of one C.M. into on account of enmity. This accusation is belated and is put forward only in the Trial court for the first time. The Learned Judge ought not to have attached any importance to this plea.

5. The learned Judge ought not to have attached any importance to the evidence of P.W.3. His evidence in fact is not helpful to anybody. Even without his evidence the evidence of P.W.1 and 7 and Ex.P.1 and 11 are alone sufficient to prove the prosecution case.

7. The several conclusions of the judge are based on a wrong approach and ~~peruse~~ perverse appreciation of the evidence. They are more hurt imaginary than factual

8. The reasons given for rejecting the evidence of P.W.1 and 2 are not cogent and their evidence do not warrant such a finding.

9. The learned judge was wrong in accepting the bare suggestions

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or the appellant and that in the face of the prosecution evidence.

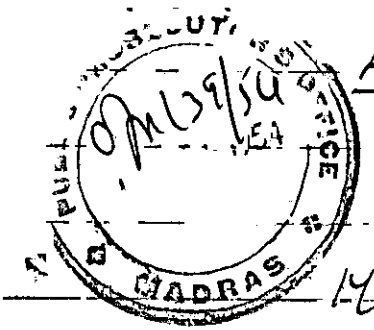
-True copy-

For Addl.Dt.Magistrate(I)

3/9

Government of Madras

Home Department



Endorsement No. 117989 CTS I/54-1 Dated 10.9.54

Referred to the Public Prosecutor, Madras, for early remarks.

Assistant Secretary

8/9/54

FB

The Public Prosecutor,
Madras, (With enl: pp. 1-36 cf.
to be returned with this reply)

C.F. 32 (a)—127,006—3-4-51.

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JUDICIAL Department

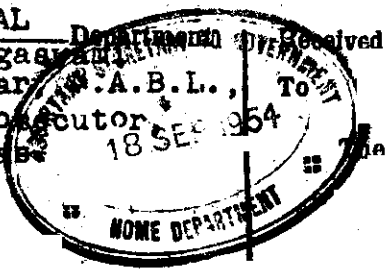
Received ——— Registered.

From (Name) Sri V.T. Rangaswami Ayyangar, B.A.B.L., Public Prosecutor, Madras.

Designation

Station

To The Secretary to Government, Home Department, Madras.



Enclosures: OFN No. 139 of 1954 dated 16--9- 1954

Sir,

SUB: Appeal against acquittal - S.C.8/54 on the file of the Assistant Sessions Judge, South Kanara - Forwarding opinion.

123164 20/9.

With reference to your endorsement No.117989 Cts I/54-1, dated 10-9-54, I give below my opinion in the above matter.

2. The papers received for reference are returned herewith.

OPINION

1) In this case the respondent who was the Branch postmaster of Permude was found guilty by the Principal Assistant Sessions Judge, South Kanara for the offence of criminal breach of trust and use of a forged document knowing or having reason to believe the same to be forged and sentenced to 2 years imprisonment and the learned Sessions Judge in

appeal set aside the conviction and sentence on the ground that there is no proof of any misappropriation and that no question of forgery arose for consideration

2) Apart from the various infirmities and discrepancies between the evidence of P.Ws. 1 and 2 which had been noted by the learned Sessions Judge in the course of the appellate judgment the evidence of P.W.3 who had actually attested the thumb impressions was to the effect that he was present when the money was paid on 28-8-52 itself and that he saw currency notes in the hands of P.W.2 would abundantly indicate that no question of criminal breach of trust could be said to have been committed much less the use of a forged document knowing or having reason to believe them to be forged. There also appears to be some basis for the contention of the accused that P.Ws. 1 and 2 were ill-disposed towards the accused who is further shown to be a man of means and substance with sufficient means.

3) In my opinion therefore an appeal against acquittal is not likely to be successful.

V.T. Rangan

Public Prosecutor. 16/1

HOME DEPARTMENT.

Courts I

[C. No. 17989/54.

G.O. Rt. No. 2908. Dated 29.9.54

S. Kanara dist.

CRIMINAL JUSTICE—Appeal against acquittal/ C.A. No. 58 of 1954 on the file of the S.T., S. Kanara-Application—Declined.

S. Kanara, C.No. 4791/54-C5 D 31.8.54

Read.—From the ~~D.M./~~A.D.M. (I) ~~Commissioner of Police, Madras.~~

From the P.P./~~S.P.,~~ Madras, Opn. No. 39 of 1954, dated 16.9.1954.

ORDER.

The Government do not consider it advisable to appeal to the High Court against the acquittal by the S.T., S. Kanara, of the accused in ~~C.C./S.~~C.A. No. 58 of 1954 on his file.

2. A copy of the opinion of the Public/~~State~~ Prosecutor, Madras, is forwarded to the ~~D.M./~~A.D.M. (I) S. Kanara, ~~(I)., Commissioner of Police,~~ for information.

24.9.54.

Copy to the P.P./ ~~S.P.~~ Madras.

To the ~~D.M./~~ADM (I)., S. Kanara.
~~Commissioner of Police, Madras~~
(with copy of ~~by~~ Registered Post).

pp 39+40 cf.

NOTE.—The draft order above is in accordance with the opinion of the P.P./~~S.P.~~ Madras at 39+40 cf.

If the Government differ from the Public/~~State~~ Prosecutor, Madras, and propose to prefer an appeal, the Advocate-General should ordinarily be consulted before orders preferring an appeal are issued.

The date of judgment is 30.7.54.
Three months time expires on 29.10.54.
Six months time expires on 29.1.55.

Home (Cts I) Dept.

C.No. 117989/54.

Crl. Jus. Appeal against acquittal. S. Kanara dist. C.A. No. 58/54/S.J., S. Kanara. Accused: Gr. Jalaluddin Yusuf, Branch Post Master, Permude.

p. 1 c/f

Ref: From the A.D.M.(I), S. Kanara, C.No. 4791/54-C5 dt. 31.8.54.

The A.D.M.(I), S. Kanara has submitted proposals for filing an appeal against the acquittal of the accused by the S.J., S. Kanara, in C.A. No. 58/54 on this file. The case may, in the first instance, be referred to the P.P., Madras. The endt. submitted is for signature.

8.9.54 8/9/54 10/9/54

*Appeal time expires on 29.1.55) Vide A on p. 4 c/f.

Issue Endorsement.

10/9

pp. 39 & 40 c/f [From the P.P., Madras, Crl. Jus. 139/54 dt. 16.9.54]

The accused in this case, a branch Post Master, Permude, was found guilty for the alleged offence of Crl. breach of trust & ~~for~~ using knowing it as forged document by the Principal Asst. S.J., S. Kanara, and was sentenced ~~by~~ to 2 years imprisonment. The S.J. S. Kanara, in C.A. 58/54 on his file, set aside this conviction and acquitted the accused. The A.D.M.(I), S. Kanara,

2. 117989 (We)

para 1, p. 1 c/f.

submitted proposals for filing an appeal against this acquittal. The P.P., Madras, for the reasons given by him at para 2 on p. 40 C.f. does not opine that such an appeal is likely to be successful. Therefore, the Govt. may decide to file an appeal in this case. The draft order submitted accordingly is for approval. para 3, p. 40 C.f.

24.9.54.

28/9/54

24/9/54

[Issued as G.O. Rt. 2908, H., 29.9.54. p. 41 C.f.